IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA

CHRISTOPHER ZIMMERMAN, COREY MIZELL, STEPHANIE DAWSON, and MIKE LEWIS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SONYA LAZAREVIC; ZORAN LAZEREVIC, SYLVIA DUDA; COGO'S CO.; AND BRIAN HAENZE d/b/a AUTO GALLERY & ACCESSORIES and as TAG TOWING AND COLLISION,

Defendants.

CHRISTOPHER GRABOVSKI, individually and on behalf of all others similarly situated,

Plaintiff,

v.

REALTY INCOME CORPORATION; COGO'S CO; AND BRIAN HAENZE D/B/A AUTO GALLERY & ACCESSORIES and as TAG TOWING AND COLLISION,

Defendants.

CIVIL DIVISION – CLASS ACTION

No. GD-18-012068

No. GD-18-012294

BRIEF IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Filed on behalf of Plaintiffs

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Plaintiffs Christopher Zimmerman, Corey Mizell, Stephanie Dawson, Mike Lewis, and Christopher Grabovski (collectively, "Plaintiffs" or "Settlement Class Representatives") respectfully submit this brief in support of their Unopposed Motion for Final Approval of Class Action Settlement, asking this Court to enter an order granting final approval of the proposed Class

Action Settlement and Release ("Settlement" or "SA")[1] and entering final judgment as to the claims raised in these actions. For the reasons described below, Plaintiffs respectfully request that their motion be granted.

I. BACKGROUND

A. Factual and Procedural Overview of the Litigation.

Plaintiffs' claims in these cases arose out of alleged overcharges for non-consensual towing services in the City of Pittsburgh, Pennsylvania. It was alleged that from June 18, 2012, through the present, Defendant Cogo's Co. ("CoGo's" or "Defendant") engaged Brian Haenze d/b/a Auto Gallery & Accessories and as Tag Towing and Collision ("Tag Towing") to tow unauthorized vehicles parked in the Parking Lots.[2] It was further alleged that Tag Towing and CoGo's, during non-consensual tows from the Parking Lots, charged vehicle owners or operators towing fees exceeding the maximum allowable amount for such tows as set forth by Pittsburgh's City Ordinances, at 5 Pittsburgh Code § 525.02 and § 525.05. (DAC ¶¶ 35–38, 40–41; GAC ¶¶ 29–32, 38–39).[3] The Amended Complaints alleged that Plaintiffs and Settlement Class Members all had their vehicles towed or hooked up to one of Tag Towing's tow trucks, and that those vehicles were held—and not released—until Plaintiffs and Settlement Class Members paid a tow fee greater than the maximum set by the City of Pittsburgh. (DAC ¶¶ 41, 47–67; GAC ¶¶ 39, 45–49). At the time

[1] Attached to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Class Certification, and for Authorization of Class Notice, *Dawson* Docket Doc. 52 & *Grabovski* Docket Doc. 53 in the respective above-captioned cases, as **Exhibit A**. Hereinafter, documents from the *Dawson* docket are referred to as "D. Doc." and documents from the *Grabovski* docket are referred to as "G. Doc."

[2] The capitalized terms used in this Brief shall be construed according to their meaning as defined in the Settlement except as may otherwise be indicated.

[3] Citations to "DAC" are citations to the Amended Complaint filed in the *Dawson* action (D. Doc. 13), and citations to "GAC" are citations to the Amended Complaint filed in the *Grabovski* action (G. Doc. 10). The information contained within the cited paragraphs is parallel across the two Amended Complaints.

that CoGo's engaged Tag Towing to conduct these non-consensual tows, the statutory maximum for a tow fee was between $110 and $135, yet Tag Towing routinely charged approximately $220–$250 per non-consensual tow. (DAC ¶¶ 36–37, 40–41; GAC ¶¶ 30–31, 38–39).

Plaintiffs initiated these cases against Sonya Lazarevic, Zoran Lazarevic, Sylvia Duda, Realty Income Corporation, and Tag Towing by way of class action complaints filed on September 18 and September 21, 2018. (D. Doc. 1; G. Doc. 1). Plaintiffs filed the operative Amended Complaints on February 5, 2019, naming CoGo's as an additional Defendant, and alleging violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Stat. §§ 202-1, *et seq.*, the Pennsylvania Fair Credit Extension Uniformity Act ("PaFCEUA"), 73 Pa. Stat. §§ 2270.1, *et seq.*, and various common law causes of action. (D. Doc. 13; G. Doc. 10). Defendants then filed Preliminary Objections to the Amended Complaints, which were subsequently fully briefed and argued by the Parties, and later overruled by the Court. (D. Doc. 15, 16, 18–20; G. Doc. 12, 13, 15–17). Following the Court's ruling on the Preliminary Objections, on December 9, 2019, CoGo's answered the Amended Complaints, denying liability as alleged and asserting cross-claims against Tag Towing. (D. Doc. 21; G. Doc. 18). On January 15, 2021, the Parties agreed to a voluntary discontinuance as to less than all defendants, following which the Court dismissed the Settlement Class Representatives' claims against Sonya Lazarevic, Zoran Lazarevic, Sylvia Duda, and Realty Income Corporation, which the Court granted without prejudice on January 19, 2021. (D. Doc. 34–36; G. Doc. 31–33).[4]

Subsequently, the Parties began to engage in written and oral discovery. On March 22, 2021, the Court consolidated seven other related cases for discovery purposes in advance of

[4] On May 6, 2024, the Court dismissed the Settlement Class Representatives' claims against Tag Towing without prejudice and further dismissed CoGo's cross-claims against Tag Towing without prejudice. (D. Doc. 53 & G. Doc. 54).

Settlement Class Members filing their Motion for Class Certification. (D. Doc. 37; G. Doc. 34). Around this time, the Parties began to engage in discussions that ultimately led to the proposed Settlement.

B. Negotiation of the Proposed Settlement.

The Parties commenced settlement discussions during the discovery phase of the litigation. After a series of arm's-length negotiations, including multiple offers and counteroffers, the Parties reached an agreement regarding the material terms of a settlement. The Parties continued drafting and finalizing the Settlement and proposed notices, and after reaching a final set of documents, the Settlement was subsequently fully executed by all Parties. If finally approved by the Court, the Settlement will resolve all claims relating to non-consensual tows from the Parking Lots that were or could have been raised against CoGo's.

After the execution of the agreement, Settlement Class Counsel began drafting a motion for preliminary approval of the Settlement and on April 26, 2024, Settlement Class Counsel moved this Court for preliminary approval of the Settlement. (D. Doc. 54 & G. Doc. 55). On May 6, 2024, the Court entered an order granting preliminary approval, conditionally certifying the Settlement Class, and authorizing notice to the Settlement Class. (D. Doc. 54 & G. Doc. 55).

In its preliminary approval order, the Court conditionally certified the following Settlement Class:

> All owners or operators (whose vehicles of any type—including passenger cars, light trucks, or motorcycles, and scooters)—were non-consensually towed from the Parking Lots by Tag Towing within the Relevant Period, and who, as a result were charged and paid a fee in excess of the limits then set by 5 Pittsburgh Code § 525.05 and otherwise pursuant to Pittsburgh Code.

(D. Doc. 54 & G. Doc. 55). By that same Order, the Court deemed Plaintiffs proper representatives of the Settlement Class and appointed Patrick D. Donathen of Lynch Carpenter, LLP and Joshua Ward of J.P. Ward and Associates, LLC as Settlement Class Counsel. (D. Doc. 54 & G. Doc. 55).

C. Terms of the Proposed Settlement Agreement.

Under the Settlement, CoGo's will pay substantial monetary consideration in exchange for the release of Plaintiffs' and Settlement Class Members' claims.

Defendant's monetary obligations are as follows:

- A payment of $35,000.00 to establish a Settlement Fund for direct monetary relief to Settlement Class Members, from which the Costs of Settlement Administration and up to $5,000.00 in Service Awards to the Settlement Class Representatives ($1,000.00 each to the extent approved by the Court) will also be paid (SA ¶¶ 1.30, 3.1, & 3.3(i)); and
- A payment of up to $69,000.00 for Settlement Class Counsel's attorneys' fees, expenses, and costs, to the extent approved by the Court. (SA ¶ 3.2(i)).

1. Direct Monetary Relief to the Settlement Class Members.

CoGo's shall pay $35,000.00 into a Settlement Fund within thirty (30) days of the Effective Date. (SA ¶¶ 1.30, 3.1(ii)). Monies from the Settlement Fund shall be used by the Settlement Administrator to pay for: (a) Costs of Settlement Administration; (b) Court-approved Service Awards of up to $1,000.00 to each of the Settlement Class Representatives; and (c) Settlement Class Members' Settlement Checks. (SA ¶ 3.1(iv)). After the Costs of Settlement Administration and Court-approved Service Awards are deducted from the Settlement Fund, the Settlement Fund will be used to pay Participating Settlement Class Members' Settlement Checks. Each Settlement Check will be equal to a *pro rata* share of the remaining funds in the Settlement Fund. (SA ¶ 3.4(ii)).

Claims. Settlement Class Members were permitted to submit attested claims for a *pro rata* share of the remaining Settlement Fund (after Service Awards and Costs of Settlement Administration are deducted) if they were non-consensually towed from the parking lots located

at 1709 Saw Mill Run Boulevard, Pittsburgh, PA 15210; 925 East Carson Street, Pittsburgh, PA 15203; 2401 East Carson Street, Pittsburgh, PA 15203; 20 Bailey Avenue, Pittsburgh, PA 15211; 304 Virginia Avenue, Pittsburgh, PA 15211; and/or 3439 W Run Road, Homestead, PA 15210 between September 18, 2012, and December 27, 2015, and were charged in excess of $110 total for the return of the towed vehicle, or between December 28, 2015, and the date of Final Approval and Judgment and were charged in excess of $135 total for return of the towed vehicle. (SA Ex. 1). Settlement Class Members who filed Approved Claims will be deemed Participating Settlement Class Members and will receive Settlement Checks. (SA ¶¶ 1.2, 1.18, 3.4).

Payment Timing and Provisions for Residual Funds. After the Effective Date, the Settlement Administrator will process valid claims of Settlement Class Members' and mail their Settlement Checks. (SA ¶ 3.4(b)(3)). Participating Settlement Class Members receiving a Settlement Check will have the duration of the Check Cashing Period to negotiate their Settlement Checks. (SA ¶ 3.4(vi)). The Parties propose that the Check Cashing Period begin the day the Settlement Administrator issues the Settlement Checks and run for the next 120 days. (SA ¶ 1.3). The Settlement Administrator is authorized to reissue an expired, unredeemed, lost, destroyed, or never received Settlement Check upon the request of a Settlement Class Member if said request is made within 180 days from the start of the Check Cashing Period. (SA ¶ 3.4(vi)). If unclaimed and uncashed payments remain in the Settlement Fund 180 days after the initial issuance of Settlement Checks, the Parties will instruct the Settlement Administrator to disburse 50% of the residual funds to the Pennsylvania Interest on Lawyers Trust Account Board, and to disburse the remaining 50% to 412 Food Rescue. (SA ¶ 3.6).

2. Service Awards and Attorneys' Fees, Costs, and Expenses of Litigation.

Service Awards will be paid from the Settlement Fund in an amount not to exceed $1,000.00 to each Settlement Class Representative, and not to exceed a collective total of

$5,000.00, subject to Court approval. (SA ¶ 3.3(i)). Separate from the monetary consideration directly available to Settlement Class Members through the Settlement Fund, CoGo's will also pay up to $69,000.00 in attorneys' fees, costs, and expenses, subject to Court approval. (SA ¶ 3.2(i)).

Settlement Class Counsel separately submitted requests for approval of attorneys' fees, costs, and expenses, and Service Awards on August 5, 2024 (D. Doc. 55–57; G. Doc. 56–58). Within thirty (30) days of the Effective Date, the Settlement Administrator shall pay the Court-approved Service Awards from the Settlement Fund, and within thirty (30) days of the Effective Date CoGo's shall make payment of the Court-approved attorneys' fees, costs, and expenses to Settlement Class Counsel. (SA ¶¶ 3.2(i), 3.3(i)).

3. Non-Monetary Relief.

Under the Settlement, if CoGo's intends to permit or permits towing from the Parking Lots, Defendant agrees that it will cause to be posted in the Parking Lots signage advising to potential parkers that they may be towed if they are not patronizing the specific business at the address on which the Parking Lots are located, and advising that the tow fee charged will be subject to the amount permitted by 5 Pittsburgh Code §§ 525.05. (SA ¶ 3.7).

4. Releases.

In exchange for the consideration provided by CoGo's under the Settlement, the Settlement Class Representatives and their related parties/or entities shall be deemed to forever release, covenant not to sue, acquit, discharge, and waive in favor of the Releasees, any and all claims, causes of action, demands, complaints, grievances, damages, debts, suits, dues, sums of money, actions and causes of action, known or unknown, accrued or unaccrued, of any nature whatsoever, whether in law, statutory or in equity, liquidated or unliquidated, whether filed or prosecuted, whether now existing or which may have ever hereinafter arise or be ascertained, which either may have or claim to have against CoGo's and/or any of the Releasees which occurred on or before the

date of the Final Approval Order and Judgment. The Release contained in this paragraph expressly, and without limitation, applies to all Releasees and includes all claims relating to compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the UTPCPL, 73 P.S. §§ 201-1 *et seq.*, the PaFCEUA, 73 P.S. 2270.1, *et. seq.*, and all other state and local consumer protection or fair credit laws and common law theories in contract or tort arising or accruing during the Relevant Period, that they have or may have, whether known or unknown, against the Releasees. (SA ¶¶ 4.1 & 1.31).

Likewise, Participating Settlement Class Members and their related parties/or entities, in exchange for the consideration provided by CoGo's under the Settlement, shall be deemed to forever release, covenant not to sue, acquit, discharge and waive in favor of the Releasees, any and all claims, causes of action, demands, complaints, grievances, damages, debts, suits, proceedings, judgments, liens, liabilities, obligations, dues, sums of money, actions and causes of action, known or unknown, accrued or unaccrued, of any nature whatsoever, whether in law, statutory or in equity, liquidated or unliquidated, whether filed or prosecuted, whether now or existing or which may ever hereinafter arise or be ascertained, which, which the Participating Settlement Class Members may have or claim to have against CoGo's and/or any of the Releasees which occurred on or before the date of the Final Approval Order and Judgment relating to alleged violations of Pittsburgh Code and/or permitting, signage/insignias and/or money charged, for tows made by Tag Towing from the Parking Lots. The Release contained in this paragraph applies expressly, without limitation, to all Releasees and includes all claims relating to compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the UTPCPL, 73 P.S. §§ 201-1 *et seq.*, the PaFCEUA, 73 P.S. 2270.1, *et. seq.*, and all other state and local consumer protection or fair credit laws and common law theories in contract or tort arising or accruing during the Relevant Period,

that they have or may have, whether known or unknown, against the Releasees that arose out of, or in connection with the Pittsburgh Code, permitting, signage/insignias and/or money charged for tows made by Tag Towing from the Parking Lots. (SA ¶¶ 4.3 & 1.19).

The Parties further agree that by entering into this Settlement, CoGo's does not release any rights to pursue Tag Towing for a claim of indemnification or contribution related to this Settlement. (SA ¶ 4.5). However, CoGo's shall not pursue Tag Towing for such a claim until after it has paid the Total Settlement Consideration pursuant to the Settlement. (*Id.*).

D. Report of the Results of the Notice Program.

Following this Court's issuance of the preliminary approval order and approval of the proposed notice program, Settlement Class Counsel provided Analytics with the approved Newspaper Notice, Long-Form Notice, and Claim Form. (Declaration of Settlement Administrator ("SA Decl.") ¶ 7). Analytics thereafter provided publication notice to Settlement Class Members consistent with a copy of Exhibit 1 attached to the SA Decl., which was published in the Pittsburgh Post Gazette and Pittsburgh City Paper for seven (7) consecutive days, commencing on June 20, 2024. (SA Decl. ¶ 8; SA Decl., Ex. 1). In addition to the publication notice described above, CoGo's posted a property posting notice, which was posted at all Parking Lots between June 10, 2024, and August 19, 2024. (Declaration of Vincent M. Roskovensky ("Roskovensky Decl.") ¶ 3; Roskovensky Ex. 1).

In addition to the publication and property posting notices, on June 20, 2024, Analytics established and maintained a Settlement Website and toll-free information line throughout the notice period, objection, and opt-out period. (SA Decl. ¶ 9). The Settlement Website contained links to pdf images of the operative Amended Complaints, Settlement Agreement, Motion for Preliminary Approval, Brief in Support of Motion for Preliminary Approval, Order Granting Preliminary Approval, Notice, Claim Form, Fee Application, and Brief in Support of Fee

Application. (SA Decl. ¶ 9). The website also provides information about the proposed settlement, including "frequently asked questions" with corresponding answers, contact information for Settlement Class Counsel, and important dates under the Settlement. (SA Decl. ¶ 9). The website provided Settlement Class Members with the ability to read the Class Notice and to file a Claim Form online. (SA Decl. ¶ 10; SA Ex. 2, 3). On June 20, 2024, Analytics also established a toll-free phone number at 833-889-1930, and an email box at CoGosTagTowingSettlement@noticeadministrator.com, offering Settlement Class Members a pre-recorded message with the ability to speak to a call center agent, and otherwise contact the Settlement Administrator with questions concerning the Settlement. (SA Decl. ¶ 12).

As of the August 19, 2024, deadline for Settlement Class Members to request exclusion from the Settlement or to file an objection to the Settlement, Analytics has received zero (0) timely requests for exclusion and zero (0) objections. (SA Decl. ¶¶ 12–13).

II. ARGUMENT

A. The Requirements for a Class Action are Satisfied and the Court Should Grant Final Class Certification to the Settlement Class.

Under the Pennsylvania Rules of Civil Procedure, the proponent of class certification must demonstrate that the prerequisites under Rule 1702 are met. Pa. R. Civ. P. 1702; *see also Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d 1, 16 (Pa. 2011).[5] Pursuant to Pa. R. Civ. P. 1710(d), the Court conditionally certified the proposed Settlement Class on May 6, 2024.

In deciding whether to certify a class action, the court is vested with broad discretion. *Cambanis v. Nationwide Ins. Co.*, 501 A.2d 635 (Pa. Super. Ct. 1985) ("Pennsylvania Rules of Civil Procedure . . . grant the court extensive powers to manage the class action."). Decisions in

[5] Additionally, Rules 1708 and 1709 specify the factors considered in determining the last two requirements of Rule 1702 (adequacy of representation and fairness and efficiency). *Id.*

favor of maintaining a class action should be liberally made. *D'Amelio v. Blue Cross of Lehigh Valley*, 500 A.2d 1137, 1141 (Pa. Super. Ct. 1985). As explained below, the Settlement Class satisfies the class certification requirements of the Pennsylvania Rules of Civil Procedure, and this Court should finally certify this class action for settlement purposes.

1. The Settlement Class is so Numerous that Joinder of All Members is Impracticable.

Rule 1702(1) requires that the proposed class be "so numerous that joinder of all members is impracticable." Pa. R. Civ. P. 1702(1). While there is no specific minimum number needed for a class to be certified, there is a general presumption that numerosity is satisfied where the potential number of plaintiffs exceeds forty. *See Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012). Ultimately, whether a class is sufficiently numerous is based on the circumstances surrounding each individual case. *Janicik v. Prudential Ins. Co. of Am.*, 451 A.2d 451, 456 (Pa. Super. Ct. 1982). And the Court should inquire as to "whether the number of potential individual plaintiffs would pose a grave imposition on the resources of the Court and an unnecessary drain on the energies and resources of the litigants should such potential plaintiffs sue individually." *Temple Univ. v. Pa. Dept. of Public Welfare*, 374 A.2d 911, 996 (Pa. Commw. Ct. 1977).

Here, the Settlement Class is sufficiently numerous. Discovery revealed that Tag Towing frequently conducted non-consensual tows from the Parking Lots during the Relevant Period. Thus, the proposed Settlement Class consists of more members than would be practicable to join.

2. There are Questions of Law or Fact Common to the Settlement Class.

Rule 1702(2) requires common questions of law and fact to exist. Where the "class members' legal grievances arise out of the same practice or course of conduct" undertaken by the defendants, Rule 1702(2) is satisfied. *Janicik*, 451 A.2d at 456; *see also Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 983 A.2d 652, 664 (Pa. 2009) (finding commonality where a claim

alleged that a company charged more for records than permitted under the Medical Records Act). Numerous other fee overcharge cases similar to this one have had classes certified by this Court. *See Patterson v. Fid. Nat. Title Ins. Co.*, No. GD-03-021176 (Pa. Com. Pl. Ct. Dec. 29, 2015) (Wettick, J.) (Doc. 178); *Farneth v. Wal-mart Stores, Inc.*, No. GD-13-011472 (Pa. Com. Pl. Ct. Mar. 21, 2017) (Colville, J.) (Doc. 52); *Toth v. Nw. Sav. Bank*, No. GD-12-008014, 2013 WL 8538695, at *4 (Pa. Com. Pl. Ct. Mar. 1, 2013) (Wettick, J.).

Here, the Settlement Class meets the commonality standard because the Settlement Class is limited to those individuals who allegedly had their vehicle non-consensually towed from the Parking Lots and were charged more than the statutory maximum fee then set by the Pittsburgh City Ordinance for the return of their vehicle. As such, Plaintiffs' and Settlement Class Members' alleged injuries all stem from the same allegedly unlawful conduct by CoGo's. These factual commonalities give rise to common legal issues such as whether CoGo's was allegedly a creditor and/or debt collector under the PaFCEUA; whether CoGo's allegedly employed Tag Towing to tow Plaintiffs' and the Settlement Class Members' vehicles; whether the state legislature granted CoGo's a lien against Plaintiffs and Settlement Class Members for the towing cost; and whether Tag Towing, hired by CoGo's, allegedly charged fees and collected sums of money from Settlement Class Members in excess of 5 Pittsburgh Code § 525.02. For these reasons, Rule 1702(2)'s commonality requirement is satisfied.

3. The Claims of the Representative Plaintiffs are Typical of the Claims of the Settlement Class.

Rule 1702(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." Pa. R. Civ. P. 1702(3). This requirement is intended to ensure that "the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance

those of the proposed class members." *Samuel-Bassett*, 34 A.3d at 30–31 (quoting *D'Amelio*, 500 A.2d at 1146). The typicality requirement is satisfied where the plaintiffs' and class members' claims arise "out of the same course of conduct and involve the same legal theories." *Samuel-Bassett*, 34 A.3d at 30–31 (citing *Dunn v. Allegheny County Prop. Assessment Appeals & Review*, 794 A.2d 416, 425 (Pa. Commw. Ct. 2002)). This does not mean that the plaintiffs' and class members' claims must be identical; only that the claims are similar enough to determine that the representative party will adequately represent the interests of the class. *Klusman v. Bucks Cty. Court of Common Pleas*, 564 A.2d 526, 531 (Pa. Commw. Ct. 1989), *aff'd*, 574 A.2d 604 (Pa. 1990). A finding that a named plaintiff is atypical must be supported by a clear conflict and be such that the conflict places the Class members' interests in significant jeopardy. *Id.*

Similar to commonality, typicality is established because Plaintiffs' claims arise out of the same practice as the claims of each Settlement Class Member—Tag Towing's, as hired by CoGo's, alleged overcharging of vehicle owners/operators for tow fees above the maximum fee for a nonconsensual tow from the Parking Lots as then provided by Pittsburgh's City Ordinances. Because this case is challenging the same alleged conduct which affects both the named Plaintiffs and the Settlement Class, there are no differences between Plaintiffs' overall position on the claims and those of the Settlement Class Members. Thus, typicality is satisfied.

4. The Representative Plaintiffs Will Fairly and Adequately Represent the Interests of the Settlement Class.

Rule 1702(4) requires that the "representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709." Pa. R. Civ. P. 1702(4). In turn, Rule 1709 lists three requirements:

> (1) whether the attorney for the representative parties will adequately represent the interests of the class,
> (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and

(3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa. R. Civ. P. 1709. The Settlement Class meets these requirements.

a. Counsel for Plaintiffs have Adequately Represented the Interests of the Settlement Class.

Plaintiffs here have retained competent counsel experienced in consumer class action litigation. Unless proven otherwise, courts will generally assume that members of the bar are adequately skilled in the legal profession. *Janicik*, 451 A.2d at 458; *see also Haft v. U.S. Steel Corp.*, 451 A.2d 445, 448 (Pa. Super. Ct. 1982) (explaining that the Court is also permitted to presume counsel's adequacy in the absence of any demonstration to the contrary). "Courts may also infer the attorney's adequacy from the pleadings, briefs, and other material presented to the court, or may determine these warrant further inquiry." *Janicik*, 451 A.2d at 458. Settlement Class Counsel has demonstrated their adequacy and commitment to this litigation through their pursuit of these claims through years-long litigation, culminating in the proposed Settlement that provides substantial relief to members of the Settlement Class. For these reasons, the Court should find this factor is met here.

b. There Are No Conflicts of Interest Between Representative Plaintiffs and the Settlement Class.

As with the adequacy of counsel requirement, the Court "may generally presume that no conflict of interest exists unless otherwise demonstrated." *Haft*, 451 A.2d at 448 (quoting *Janicik*, 451 A. 2d at 459). Plaintiffs are not aware of any "hidden collusive circumstances," *Haft*, 451 A.2d at 448, that could pose conflicts of interest between Plaintiffs and members of the Settlement Class. Plaintiffs and members of the Settlement Class have aligned interests: they were all subject to Tag Towing's, as engaged by CoGo's, and all alleged uniform overcharging for non-consensual tows from the Parking Lots. If Plaintiffs succeed in obtaining final approval of the proposed Settlement,

the benefits will inure to Plaintiffs and all Settlement Class Members in a manner calculated to equitably correspond to the amount of monetary harm suffered by each individual.

c. The Interests of the Settlement Class Members Have Not Been Harmed by Lack of Adequate Resources.

The requirement that the representative plaintiff demonstrate access to adequate financial resources to ensure that interests of the class are not harmed may be met if "the attorney for the class representatives is ethically advancing costs." *Haft*, 451 A.2d at 448; *see also Janicik*, 451 A.2d at 459–60. That is the case here: Plaintiffs' counsel undertook this litigation pursuant to a standard contingent fee agreement, and up through this point in the litigation, counsel have advanced all costs required to maintain the litigation. Under the terms of the Settlement, Settlement Class Counsel is ethically seeking reimbursement of its costs and payment of its fees as described in Plaintiffs' Application for Attorneys' Fees, Costs, and the Costs of Settlement Administration, and Service Awards to Representative Plaintiffs, which was filed on August 5, 2024, and was published in full on the Settlement Website shortly thereafter. (D. Doc. 55–57; G. Doc. 56–58).

5. A Class Action is a Fair and Efficient Method of Adjudicating the Controversy.

Rule 1702(5) requires that the court determine whether a class action provides a "fair and efficient method of adjudicating the controversy," with reference to additional factors in Rule 1708. Pa. R. Civ. P. 1702(5). In turn, Rule 1708 lists the following factors for courts to consider:

> In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters the criteria set forth in subdivisions (a), (b) and (c).
>
> (a) Where monetary recovery alone is sought, the court shall consider
> (1) whether common questions of law or fact predominate over any question affecting only individual members;
> (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
> (3) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;
(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;
(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;
(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

(b) Where equitable or declaratory relief alone is sought, the court shall consider
(1) the criteria set forth in subsections (1) through (5) of subdivision (a), and
(2) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.

(c) Where both monetary and other relief is sought, the court shall consider all the criteria in both subdivisions (a) and (b).

Pa. R. Civ. P. 1708.

a. Common Questions of Law and Fact Predominate.

The predominance inquiry under Rule 1708(a)(1), while "more demanding" than the commonality standard, requires "merely" that the "common questions of fact and law . . . predominate over individual questions." *Samuel-Bassett*, 34 A.3d at 23. "[A] class consisting of members for whom *most* essential elements of its cause or causes of action may be proven through simultaneous class-wide evidence is better suited for class treatment than one consisting of individuals from whom resolution of such elements does not advance the interests of the entire class." *Id.* Where class members can demonstrate that they were subjected to the same harm and that they identify a "common source of liability," individualized issues such as varying amounts

of damages will not preclude class certification. *See id.* at 28 (citations and quotation marks omitted).

As explained above, the key issues in this case shared by Plaintiffs and Settlement Class Members involve Tag Towing's and CoGo's alleged overcharging of vehicle owners/operators for tow fees above the maximum fee for a nonconsensual tow from the Parking Lots as then provided by Pittsburgh's City Ordinances. Questions relating to Tag Towing's and CoGo's alleged overcharging for tow fees for the return of Plaintiffs' and Settlement Class Members' vehicles would be the primary focus of the continued litigation, and those questions would be resolved with answers uniform to Plaintiffs and the Settlement Class. These legal and factual issues predominate over individualized questions, which would at most involve questions regarding the nature and amount of damages suffered by Plaintiffs and Settlement Class Members stemming from the alleged fee overcharges.

b. The Size of the Settlement Class and Manageability of the Case Weigh in Favor of Class Certification.

Rule 1708(a)(2) requires the Court to consider "the size of the class and the difficulties likely to be encountered in the management of the action as a class action." Pa. R. Civ. P. 1708(a)(2). Tag Towing frequently conducted non-consensual tows from the Parking Lots—and proceeding as a class action here for settlement purposes is fully manageable. Here, the Parties have agreed to a settlement structure and claims process designed to permit the Settlement Administrator to make a straightforward and simple determination of the amount each Settlement Class Member will receive under the Settlement. In these circumstances, there are no potential manageability problems weighing against class certification.

c. Prosecution of Separate Individual Actions Creates a Risk of Inconsistent Rulings.

Rule 1708(a)(3) requires the Court to consider whether prosecution of separate individual actions, as opposed to a class action, would create risks of inconsistent or varying rulings which would confront the defendant with incompatible standards of conduct, and whether adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of others or impair their ability to protect their interests. Pa. R. Civ. P. 1708(a)(3). Where, as here, the Plaintiffs and Settlement Class Members share an identical claim stemming from the same conduct on the part of the defendant, a class action "affords the speedier and more comprehensive statewide determination of the claim," and is "the better means to ensure recovery if the claim proves meritorious or to spare [defendant] repetitive piecemeal litigation if it does not." *Janicik*, 451 A.2d at 462–63. Indeed, because Plaintiffs sought to establish CoGo's liability under a theory that Tag Towing's and CoGo's alleged uniform tow fee overcharging to discharge CoGo's lien on Plaintiffs' and Settlement Class Members' vehicles impacted all members of the Settlement Class, there is a substantial risk that individual actions would lead to varying outcomes. *Id.* at 462 ("Courts may, and often do, differ in resolving similar questions."). Therefore, this factor weighs in favor of class certification.

d. The Extent and Nature of Litigation by Other Settlement Class Members Weighs in Favor of Class Certification and this Court is an Appropriate Forum.

Rule 1708(a)(4) requires the Court to consider "the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues." Pa. R. Civ. P. 1708(a)(4). This factor weighs in favor of certification because there are no other actions against CoGo's related to its engagement of Tag Towing to conduct non-consensual tows from the

Parking Lots, so there is no risk that class certification would impair the rights of other litigants in other actions.

Additionally, this Court is an appropriate forum because this county is the location of CoGo's principal place of business, where the acts and omissions relevant to the claims took place and is the place of residence of the named Plaintiffs and likely a substantial number of members of the Settlement Class. As a result, there is "no one common pleas court which would be better to hear the action." *Baldassari*, 808 A.2d at 195 (quoting *Cambanis*, 501 A.3d at 641 n.19).

e. The Amounts at Issue, Complexities of the Issues, and Expenses of Litigation Justify a Class Action Rather Than Individual Actions.

Rule. 1708(a)(6) requires the Court to consider whether, in light of the complexity of the issues and expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions. Relatedly, Rule 1708(a)(7) requires the Court to consider whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

Here, both factors support class certification. Plaintiffs and Settlement Class Members were all allegedly charged over $200 for the discharge of the lien and release of their towed vehicles—making the amount of the overcharge for the Settlement Class at least $85. Further, each alleged individual overcharge is relatively modest in size, making it unlikely that the overcharges could be prosecuted or adjudicated economically on an individual basis. As such, were the litigation to continue as individual actions rather than a class action, Settlement Class Members may not have the financial incentive to pursue litigation to vindicate their rights.

Importantly, the Settlement provides a reasonable compromise, that if finally approved, will accomplish a desirable outcome in one proceeding—those individuals who were subject to

CoGo's alleged conduct have been provided an opportunity to submit claims to recover for the alleged overcharges without having to bring their own lawsuit. As a result, Settlement Class Members will be entitled to compensation if this action is certified, and the Settlement finally approved. When weighed against the prospects of individual litigation, the proposed Settlement here offers all the potential advantages of class certification—eliminating the possibility of numerous duplicative claims and redundant work for counsel and the courts, while providing a recovery for a large group without requiring each individual Settlement Class Member to shoulder the burden of litigation expenses despite potentially small recovery.

For these reasons, the factors described in Rule 1708(a)(6) & (7) both support certification.

B. The Court Should Finally Approve the Settlement.

Plaintiffs request that the Court finally approve the proposed Settlement on the grounds that the proposal falls within the range of reasonableness and that approval on these terms will secure an adequate recovery in exchange for the releases of the claims raised in the action.

The approval of a class action comes in two stages. First, the proposal is submitted to the Court for a preliminary fairness evaluation. *Brophy v. Phila. Gas Works and Phila. Facilities Mgmt. Corp.*, 921 A.3d 80, 88 (Pa. Commw. Ct. 2007). If approval is granted, notice is given to the class members and a formal fairness hearing is scheduled where the Court can receive arguments and evidence in support of or in opposition to the proposal. *Id.* The "range of reasonableness" standard requires the Court to examine whether the proposed settlement secures an "'adequate' (and not necessarily best possible) advantage for the class in exchange for the surrender of the members' litigation rights." *Dauphin Deposit Bank and Trust Co. v. Hess*, 727 A.2d 1076, 1079 (Pa. 1999). Factors relevant to the ultimate approval of the settlement include:

1. the risks of establishing liability and damages;
2. the range of reasonableness of the settlement in light of the best possible recovery;

3. the range of reasonableness of the settlement in light of all the attendant risks of litigation;
4. the complexity, expense, and likely duration of the litigation;
5. the state of the proceedings and the amount of discovery completed;
6. the recommendations of competent counsel; and
7. the reaction of the class to the settlement.

Id. at 1079–80. A review of these factors demonstrates that the Settlement is within the range of reasonableness and should be finally approved. As explained above, the Settlement provides monetary benefits for the Settlement Class in the amount of $35,000.00 plus non-monetary benefits in the form of the agreed-upon injunctive relief. Such relief is on par with similar towing fee overcharges for which this Court has granted final approval. *See, e.g.*, *Arin v. Riverset Credit Union et al*., GD-18-12065 (Pa. Com. Pl. Ct. Oct. 16, 2023) (Ignelzi, J.) (Doc. No. 58); *Jones et al. v. Alder Highland Associates, LLC et al.*, GD-18-012298 (Pa. Com. Pl. Ct. Aug. 4, 2023) (Ignelzi, J.) (Doc. No. 66); *Horsely v. Shakespeare Street Associates et al.*, GD-18-012027 (Pa. Com. Pl. Ct. Aug. 4, 2023) (Ignelzi, J.) (Doc. No. 61); *Waldron et al. v. Eastside Limited Liability Co. et al.*, GD-18-012034 (Pa. Com. Pl. Ct. Dec. 7, 2023) (Ignelzi, J.) (Doc. No. 68); *Mahon et al. v. Penn Management Realty LLC et al.*, GD-18-012021 (Pa. Com. Pl. Ct. Dec. 7, 2023) (Ignelzi, J.) (Doc. No. 51).

1. The Risks of Establishing Liability and Damages.

"In evaluating the likelihood of success, a court should not attempt to resolve unsettled issues or legal principles but should attempt to estimate the reasonable probability of success." *Dauphin Deposit Bank & Tr. Co. v. Hess*, 698 A.2d 1305, 1309 (Pa. Super. Ct. 1997*), aff'd*, 556 727 A.2d 1076 (1999). While Plaintiffs are confident of the strength of their claims, Plaintiffs and Settlement Class Members face significant risks to establishing liability and ultimately recovering. Here, CoGo's has raised reasonable defenses and objections to Plaintiffs' claims that Tag Towing, as engaged by CoGo's, overcharged for tow fees, engaged in unfair or deceptive practices,

breached a contract, or was otherwise unjustly enriched. Those defenses include but are not limited to: Plaintiffs' damages were caused by Tag Towing's actions or omissions, not CoGo's actions or omissions; Tag Towing was not acting as CoGo's agent when performing non-consensual tows from the Parking Lots; Plaintiffs' claims are barred by comparative or contributory negligence; and Plaintiffs did not rely on any representations made by CoGo's when they paid monies to Tag Towing for the return of their vehicles. As such, this factor weighs in favor of final approval.

2. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery and in Light of the Attendant Risks of Litigation.

The next two factors require the court to analyze the range of reasonableness of the settlement. "In deciding whether the settlement falls within a 'range of reasonableness,'" a court needs "to examine whether the proposed settlement secures an 'adequate' (and not necessarily the best possible) advantage for the class in exchange for the surrender of the members' litigation rights." *Dauphin Deposit Bank*, 727 A.2d at 1079. "In this light, a court need not inquire into whether the 'best possible' recovery has been achieved. Rather, in view of the stage of the proceedings, complexity, expense, and likely duration of further litigation, as well as the risks of litigation, the court is to decide whether the settlement is reasonable." *Id.*

As explained above, the Settlement and distribution process is structured so that Settlement Class Members who file an Approved Claim will receive a *pro rata* share of the Settlement Fund. Here, the $35,000.00 Settlement Fund will provide a *per capita* recovery for Participating Class Members, excluding the additional settlement benefits provided directly by CoGo's in the form of attorneys' fees, cost, and expenses. This is far superior to the *per capita* cash recoveries in other approved unfair trade practices settlements. *Oslan v. L. Offs. Of Mitchell N. Kay*, 232 F. Supp. 2d 436, 442 (E.D. Pa. 2002) (approving unfair trade practices settlement where the class award was $20,000 for 3,413 class members); *Saunders v. Berks Credit & Collections, Inc.*, No. CIV. 00-

3477, 2002 WL 1497374, at *6 (E.D. Pa. July 11, 2002) (approving unfair trade practices settlements where the class awards were $12,300 and $37,500 for classes that respectively contained 1,474 and 1,579 members). The recovery for Settlement Class Members is also on par with similar tow fee overcharge class settlements this Court has granted final approval to. *See, e.g.*, *Riverset Credit Union*., GD-18-12065 (Doc. No. 58) (granting final approval to a claims-made class action settlement against a similar property defendant).

This Settlement is particularly strong in light of the risks and delay-related downsides of continued litigation. But, as discussed above, the risks of continuing litigation are substantial because Plaintiffs have no assurance of establishing liability or any entitlement to monetary relief. As such, these factors weigh in favor of final approval.

3. The Complexity, Expense and Likely Duration of the Litigation.

The complexity, expense, and duration factor "captures the probable costs, in both time and money, of continued litigation." *In re Cedant Corp. Litigation*, 264 F.3d 201, 233 (3d Cir. 2001). "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *Milkman v. Am. Travellers Life Ins. Co.*, 61 Pa. D. & C.4th 502, 543 (Pa. Com. Pl. Ct. 2002) (citing *In re NASDAQ Market-Makers Antitrust Litigation*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("[C]lass actions have a well deserved reputation as being most complex.")).

By settling this matter now, the Parties avoid the further expenses of motions for class certification and summary judgment, preparation for trial, uncertainty of the trial outcome, and likely appeals from the judgment, all while providing a substantial and direct benefit to Settlement Class Members now as opposed to some uncertain amount at some point in the future. Thus, this factor strongly weighs in favor of final approval.

4. The State of the Proceedings and the Amount of Discovery Completed.

"The purpose of the state of the proceedings and discovery completion factor is to ascertain the 'degree of case development that class counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.'" *Milkman*, 61 Pa. D. & C. 4th at 544 (quoting *In re Gen. Motors Corp. Pick Up Truck Fuel Tank Prod. Liab. Litig*., 55 F.3d 768, 813 (3d Cir. 1995)). This ensures that "a proposed settlement is the product of informed negotiations" by providing for "an inquiry into the type and amount of discovery the parties have undertaken." *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 319 (3d Cir. 1998).

Here, the Parties have been litigating this case for approximately six years. During that time, the Parties have briefed and argued multiple rounds of preliminary objections, engaged in extensive discovery, including written discovery as well as multiple depositions of Brian Haenze of Tag Towing. Further, the Parties ultimately reached an agreement after a series of arm's-length negotiations and multiple rounds of offers and counteroffers. As such, the Parties adequately appreciated the merits of the case when reaching the Settlement. Thus, this factor weighs in favor of final approval.

5. The Recommendations of Competent Counsel.

"The opinion of experienced counsel is entitled to considerable weight." *Fischer v. Madway*, 485 A.2d 809, 813 (Pa. Super. Ct. 1984). Here, Settlement Class Counsel and CoGo's Counsel have negotiated this Settlement at arm's-length for months, and all Settlement Class Counsel is satisfied that this Settlement provides a more than adequate benefit to the Settlement Class and is in the best interest of the Settlement Class as it provides them with an opportunity to submit claims for monetary relief that will reimburse them for the alleged tow fee overcharges. Thus, this factor weighs in favor of final approval.

6. The Reaction of the Class to the Settlement.

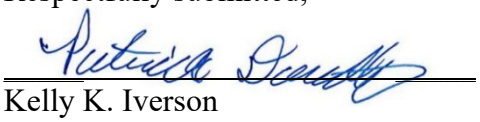
After a robust notice program as described above, the reaction has been overwhelmingly favorable and positive. As of the August 19, 2024 objection and opt-out deadline, zero (0) Settlement Class Members filed objections to the Settlement, and zero (0) individuals have requested exclusion from the Settlement Class. The nonexistence of objections and opt-out requests weighs heavily in favor of final approval. *See High St. Rehab., LLC v. Am. Specialty Health Inc.*, Case No. 2:12-cv-07243-NIQA, 2019 WL 4140784, at *4 (E.D. Pa. Aug. 29, 2019) ("A low number of objectors or opt-outs is persuasive evidence of the proposed settlement's fairness and adequacy.").

III. CONCLUSION

For the reasons discussed herein, Plaintiffs respectfully request that, upon completion of the fairness hearing, the Court enter the Parties' proposed Final Approval Order and Judgment, which is attached to Plaintiffs' Motion.

Dated: September 16, 2024

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2024, the foregoing was served by email on the following:

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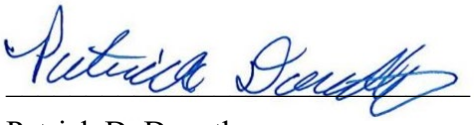

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